

- (1) The nature and extent of claimant's injury and disability.

- (2) What, if any, is the liability of the Kansas Workers Compensation Fund?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole record including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The findings of fact and conclusions of law as set out by the Administrative Law Judge in the Award are specified in some detail and it is not necessary to repeat those herein. The findings and conclusions as enumerated in the Award are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The Administrative Law Judge, in awarding claimant a 6.5 percent disability through October 26, 1993, has appropriately applied the logic of Lee v. Boeing Co.- Wichita, 21 Kan. App. 2d 365, 899 P.2d 516 (1995) to the facts of this case. In awarding claimant a 42 percent permanent partial general body disability after claimant's layoff on October 26, 1993, the Administrative Law Judge has further applied the logic of Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990). The Appeals Board finds the Award granted by the Administrative Law Judge to be appropriate and adopts same as its own as if specifically set forth herein.

The Appeals Board has elected not to adjust the Award of the Administrative Law Judge involving the loss of claimant's ability to earn a comparable wage to include the fringe benefits package earned by claimant at Boeing. Both Karen Terrill and Jerry Hardin opine claimant would qualify for a fringe benefits package if he obtained a new job. Ms. Terrill stated claimant's fringe benefit package with a new company would be similar to the one claimant held with respondent. This testimony is significant to a consideration of the claimant's loss of ability to earn a comparable wage. In this instance the Appeals Board finds claimant has the ability to earn a comparable fringe benefit package and, therefore, has not suffered a loss in this regard.

The Administrative Law Judge denied respondent reimbursement from the Kansas Workers Compensation Fund. The Appeals Board finds this decision to be appropriate. While claimant had symptoms to his low back in 1980, he went for approximately 15 years with no symptoms. The injury suffered on March 24, 1993, while lifting a 90 pound object at work, was sufficient to cause claimant to suffer the injury without regard to preexisting conditions. The Appeals Board also finds, as did the Administrative Law Judge, that respondent has failed to prove claimant a handicapped employee prior to March 24, 1993.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl dated September 13, 1994, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

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c: James B. Zongker, Wichita, Kansas  
Eric K. Kuhn, Wichita, Kansas  
Cortland Q. Clotfelter, Wichita, Kansas  
Shannon S. Krysl, Administrative Law Judge  
Philip S. Harness, Director